

HOLIDAY GUIDANCE
ON
PARTYING WITH CONTRACTORS AND SUPERVISORS

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It's holiday time, and many offices hold parties and receptions involving food, drink, and even gifts. Such activities among Federal employees are well established, but the inclusion of contractor employees, who are not Federal employees yet who work in your organization, adds some new considerations. The guidance below addresses these issues.

THE RULES (5 C.F.R. 2635. 201 - 304)

The following restrictions frequently come into play with holiday parties. (These are not all of the rules and exceptions, only the most applicable ones for holiday events.)

Gifts From Contractors:

1. Federal employees may not accept gifts from contractors or contractor personnel.
 - a. Exception #1: Gifts (other than cash) not exceeding \$20 may be accepted as long as the employee has not accepted other gifts from the contractor that, when accumulated, exceed \$50 for the year.
 - b. Exception #2: Federal employees may accept gifts from a contractor employee that are based on a bona fide personal relationship. (Such personal gifts are actually paid for by the contractor employee.)
 - c. Exception #3: Federal employees may generally attend a contractor's open-house or reception if it is a widely-attended gathering, and the employee's supervisor determines that it is in the agency's interest that the employee attends.
 - d. Exception #4: Federal employees may accept invitations (even from contractors) that are open to the public, all Government employees, or all military personnel.
 - e. Exception #5: Federal employees may accept invitations offered to a group or class that is not related to Government employment.

Gifts Between Federal Employees:

1. Superiors may not accept gifts from subordinates or employees who receive less pay
 - a. Exception #1: On an occasional basis (like during the holidays) superiors may accept gifts (other than cash) of \$10 or less from a subordinate.
 - b. Exception #2: Superiors can accept food and refreshments shared in the office.
 - c. Exception #3: Superiors may accept personal hospitality in the residence of a subordinate of the type and value customarily given on such an occasion.
 - d. Exception #4: Superiors may accept gifts of the type and value customarily given for personal hospitality at their residences.
- (Please note, there are no restrictions on gifts given to peers or subordinates)

Rules Applicable to Contractor Employees:

1. Many contractors have rules of ethics or business practices that are similar to the Federal rules. Take these rules into consideration before offering contractor employees gifts or opportunities they may not be able to accept.

APPLICATION OF THE RULES:

1. **Office Party (non-duty time):** Your office is having a holiday party during the non-duty lunch hour or after work and asks each person attending to pay \$5 to cover refreshments and to bring a pot luck dish or dessert. Contractor employees may attend, pay \$5, and bring food because these contributions are not considered to be gifts, but a fair share contribution to the refreshments. **Remember**, contributions must be voluntary, so soliciting must be done with care to ensure there is no pressure. Also, ensure this is non-duty time for the contractor employees as well.
2. **Office Party (duty time):** What about a party that cuts into duty hours? The government usually may not reimburse a contractor for its employees' morale and welfare expenses. The contractor has to decide whether to let its employees attend and forego payment for their time, or

insist that they continue to work. If contractor employees are allowed to attend, the contractor must also decide whether it would pay its employees for that time, even though it wouldn't be reimbursed by the government. The contractor does not have to pay its employees for that time. Consult the contracting officer and ethics counselor before inviting contractor employees to a function during their duty hours.

3. Gift to Supervisor: Your office wants to give the office supervisor a gift. However, you can't solicit other employees for contributions to a group gift at a recurring occasion such as the holidays. This goes double for contractor employees. You can't ask them to contribute any cash toward a gift, as it is considered soliciting a gift from a prohibited source. Even if the contractor employees volunteer to contribute cash, it may not be accepted because the \$20 exception does not apply to cash.

4. Exchange of Gifts: Your office, including the contractor employees, wants to exchange gifts at the party. If gifts are chosen at random or traded, there are no monetary limits (except common sense) because the purchaser of the gift does not know who will eventually receive it. Gift exchanges in which employees purchase gifts for other employees whose names they drew at random, are more troublesome. Where an employee may buy a gift for a superior, the \$10 limit is prudent. Where contractor personnel are involved, a \$20 limit eliminates any concerns. Some organizations consider such a gift exchange to be exchanges of items of equivalent value, and that everyone participating is paying market value for the items, so no one is receiving a gift. As such, the suggested monetary limits above, are not applicable.

5. Private Parties (Federal Employee): One of your government co-workers is having a party at his house and has invited the whole office, including the contractor employees. This is ok because a gift of food and refreshments to a contractor employee does not violate government ethics rules. He may, however, want to check with his contractor's rules before accepting since many contractors have similar ethics rules. If the contractor employee brings a gift to the host as thanks for the hospitality, it may not exceed \$20. If it is more, but is immediately edible, the host could accept it on behalf of all the guests and share it.

6. Private Parties (Contractor Employee): If a contractor employee is having a party and invites government employees, normally the government employee must decline, since the food, drink, and entertainment is a gift from a prohibited source. Several exceptions may permit attendance, however. Under the \$20 rule, if the average cost per guest does not exceed \$20, the government employee may accept. (However, if the cost per guest is \$40, the "I won't eat more than \$20 worth of food." defense will not work.) Also, the government employee

may accept if the invitation is based on a bona fide personal relationship with the contractor employee. Finally, if the party qualifies as a widely-attended gathering (involving a large number of persons representing a diversity of views) and the employee's supervisor determines that it is in the agency's interest for the employee to attend, the employee may enjoy the food, drink, and entertainment. Government employees who desire to take a gift to show their appreciation for the hospitality should consult with the contractor employee to determine if he or she may accept such a gift in accordance with the contractor's rules of ethics.

7. Private Parties (Contractor-sponsored): If the contractor is sponsoring an employee's party or open-house, and you are invited by the contractor, you may not attend unless one of the exceptions in paragraph #6, above, apply.

Have a wonderful holiday season. Please remember that this guidance only highlights common questions, and does not cover every situation. If you are unsure, contact your ethics counselor.